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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

K.M.,

Petitioner,

v.

THE SUPERIOR COURT OF KERN COUNTY,

Respondent;

KERN COUNTY DEPARTMENT OF HUMAN  
SERVICES,

Real Party in Interest.

F073888

(Kern Super. Ct. Nos. JD134627-00  
& JD135498-01)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Louie L. Vega, Judge.

K.M., in pro. per., for Petitioner.

No appearance for Respondent.

Theresa A. Goldner, County Counsel, and Amanda LeBaron, Deputy County Counsel, for Real Party in Interest.

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\* Before Detjen, Acting P.J., Franson, J. and Smith, J.

K.M., in propria persona, seeks extraordinary relief from the juvenile court's orders issued at a contested dispositional hearing denying her reunification services under Welfare and Institutions Code section 361.5, subdivision (b)(2)<sup>1</sup> because of a mental disability and setting a section 366.26 hearing as to her now two-year-old daughter, H.M. and nine-month-old son, P.M. We deny the petition.

### **PROCEDURAL AND FACTUAL SUMMARY**

K.M. is an unmarried mother of seven children, each from a different father. Two of her children have been adopted and three of them are in legal guardianship with their maternal grandmother. K.M. (mother) suffers from schizophrenia. She has an extensive criminal background and a history of violence towards her parents and neglect of her children. Notably, in February 2013, she crushed prescription medication and attempted to bottle feed it to her newborn son. Had she done so, the child could have died. She was charged with willful cruelty to a child and pled nolo contendere to the charge.

These dependency proceedings were initiated in April 2015. At the time, mother and H.M. were living with the maternal grandmother. The Kern County Department of Human Services (department) received a report that the maternal grandmother was wheelchair bound and could not supervise the children. In addition, the house was in disarray and filthy and mother was in and out of the house and did not assist with the children's care or in maintaining the home.

The department filed an original dependency petition under section 300 on H.M.'s behalf, alleging mother's untreated substance abuse and mental illness placed H.M. at risk of harm. The department did not remove H.M. from mother's custody.

The juvenile court exercised its dependency jurisdiction over H.M. and ordered mother to participate in parenting instruction and mental health and substance abuse

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

services under a plan of family maintenance. The court also appointed Dr. Sheila Morris to conduct a psychological evaluation to determine if mother could benefit from reunification services. Dr. Morris confirmed mother's diagnosis of schizophrenia and opined that she presented a danger to her children and that she should not be provided reunification services at that time. However, she recommended that, if ordered, services should include individual psychotherapy, a medication evaluation, parenting instruction and substance abuse treatment.

In November 2015, mother gave birth to P.M. Hospital staff reported mother was unable to care for the baby and was not getting up to feed him or change his diaper. The doctor did not believe she was capable of caring for the baby. The department filed an original petition on behalf of P.M. and a supplemental petition (§ 387) on behalf of H.M., alleging mother's mental illness and substance abuse placed the children at risk of harm. The department did not remove the children from mother's custody

In December 2015, the juvenile court conducted a contested hearing on the original and supplemental petitions and dismissed them. Approximately a week later, the maternal grandmother contacted emergency services because P.M. was not breathing. He was found unconscious and nonresponsive and rushed to the hospital.

Mother told a deputy that P.M. was laboring to breathe and she thought he was having an asthma attack so she gave him albuterol. She said the doctor told her to give it to him but then admitted that was not true. After she gave P.M. albuterol, he stopped breathing and she shouted to her mother who called emergency services. Mother also said she had given P.M. four bottles of formula each containing approximately two ounces of formula over the prior 24 hours.

A nurse who was present when P.M. arrived at the hospital said that he was extremely pale and cold to the touch and had blue spots on his arms and legs. He was gasping for air and not breathing adequately on his own. It took one of their best

respiratory technicians 15 minutes to insert a breathing tube so that they could place him on a ventilator. She said she thought he was dying.

The department placed the children under protective custody and filed an original dependency petition as to P.M., alleging mother failed to provide him adequate food or medical care. The department filed a supplemental petition as to H.M. The juvenile court ordered the children detained and the department placed them in foster care.

In March 2016, the juvenile court conducted a contested jurisdictional hearing. Mother testified about the quantity and frequency she was feeding P.M. in the days preceding his hospitalization. On the day he was hospitalized she said she fed him three ounces of formula every two hours. The juvenile court sustained the allegations and appointed Dr. Michael Musacco to conduct a psychological evaluation of mother. Dr. Musacco diagnosed her as having schizophrenia spectrum disorder and opined that she would not be able to benefit from reunification services at that time.

In its report for the dispositional hearing, the department informed the juvenile court that mother completed substance abuse counseling, was participating in mental health and parenting/neglect counseling and was testing negative for drugs. However, the department recommended the juvenile court deny her reunification services under section 361.5, subdivision (b)(2) based on the psychologists' opinions that she suffered from a mental disability and would not benefit from reunification services.

In June 2016, the juvenile court conducted a contested dispositional hearing on the petitions. Dr. Musacco testified that mother was on medication when he evaluated her and appeared to be more stable. However, she was in complete denial as to her need for treatment and the life-threatening situation she caused for P.M. Though he believed she could make progress in treating her mental health condition, he did not believe that she would or that it would occur within 18 months.

The court denied mother and the children's alleged father's reunification services as recommended and set a section 366.26 hearing. This petition ensued.

### **DISCUSSION**

Mother appears to challenge the juvenile court's finding she failed to adequately feed P.M. She seeks relief in the form of an order returning P.M. to her custody or providing her reunification services.

The primary purpose of dependency proceedings is to protect the child. (*In re Kerry O.* (1989) 210 Cal.App.3d 326, 333.) To that end, the juvenile court stands in loco parentis to the minor over whom it has jurisdiction. (*In re Hadley B.* (2007) 148 Cal.App.4th 1041, 1048.) In order to exercise its dependency jurisdiction over a minor, the juvenile court must first find by a preponderance of the evidence that the minor child is described by one or more of the subdivisions set forth in section 300. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.)

After finding that a child is a person described in one of the subdivisions of section 300 and, therefore, the proper subject of dependency jurisdiction, the juvenile court must determine the proper disposition to be made of the child, including whether to remove the child from parental custody and order services to reunify the family. (§§ 361, subd. (c), 361.5.)

Dependency law presumes that services will be provided to reunify the family unless the juvenile court finds by clear and convincing evidence that any one of 16 exceptions set forth in section 361.5, subdivision (b) applies. (§ 361.5, subds. (a) & (b).)

We review the juvenile court's findings and orders for substantial evidence. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378.) With these principles in mind, we turn to mother's petition.

The juvenile court exercised its dependency jurisdiction over the children under section 300, subdivision (b)(1) because mother failed to protect them. It first exercised

its jurisdiction over H.M. in July 2015 after finding that mother's mental illness and substance abuse placed H.M. at risk of harm. In March 2016, the juvenile court exercised its dependency jurisdiction over P.M. after finding that mother placed him at risk of harm by not providing him adequate food and medical treatment.<sup>2</sup> On the same facts, the juvenile court sustained the supplemental petition as to H.M., finding family maintenance was ineffective in protecting her.

In finding that mother failed to adequately feed P.M., the juvenile court considered medical evidence as well as mother's testimony. Though mother testified she fed P.M. every two hours, the record reflects P.M. had not been consistently fed for days and was in distress. We thus conclude, substantial evidence supports the juvenile court's jurisdictional finding.

Substantial evidence also supports the juvenile court's order denying mother reunification services. The juvenile court may deny a parent reunification services under section 361.5, subdivision (b)(2), if it finds by clear and convincing evidence that the parent suffers "from a mental disability ... described in ... the Family Code and that renders him or her incapable of utilizing those services." Family Code section 7827, subdivision (a) defines the "mentally disabled" parent as one suffering a mental incapacity or mental disorder that renders the parent unable to adequately care for and control the child. A finding of mental disability must be supported by the opinion of two mental health experts who meet the qualifications set forth in Family Code section 7827, subdivision (c). As licensed psychologists, Drs. Morris and Musacco qualify as mental health experts under the statute.

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<sup>2</sup> The juvenile court also exercised its dependency jurisdiction over P.M. under section 300, subdivision (j) (abuse of sibling).

In this case, the juvenile court denied mother reunification services under section 361.5, subdivision (b)(2) based on the expert opinion of two psychologists, Drs. Morris and Musacco, that mother suffers from a mental disability that renders her incapable of adequately caring for H.M. and P.M.

We conclude the evidence supports the juvenile court's finding that mother's mental illness places her children at a substantial risk of harm and its orders removing them from her custody and denying her reunification services.

### **DISPOSITION**

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.